

**SETTLEMENT AGREEMENT BETWEEN MISSOURI BOARD OF
PHARMACY
AND RICHARD P. BUTLER**

Richard P. Butler, ("Licensee") and the Missouri Board of Pharmacy ("Board") enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo,¹ the parties hereto waive the right to a hearing by the Administrative Hearing commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence on mitigation of discipline; and the right to request the recovery of attorney's fees incurred in defending this action against his license. Being aware of these rights provided to Licensee by operation of law, Licensee knowingly and voluntarily waives

¹ All statutory references are to the 2000 Revised Statutes of Missouri, as amended, unless otherwise stated.

each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigation report and other documents relied upon by the Board in determining there was cause for discipline, along with citations to law and/or regulations the Board believes were violated. For purpose of settling, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's pharmacist license, license number 043888, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

Joint Stipulation of Facts

1. The Board is an agency of the State of Missouri created pursuant to Section 338.140, RSMo, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.
2. Licensee holds a license from the Board as a pharmacist, license number 043888, ("license"), which was current and active at all times relevant herein.
3. Between June 19, 2007 and December 11, 2007, Licensee was employed as pharmacist at Hy-Vee, ("pharmacy"), located at 929 Highway D, Osage Beach, Missouri, 65065.
4. As a licensed pharmacist, Licensee has a professional duty not to write prescriptions for himself or to forge a physician's signature on prescriptions.
5. As a licensed pharmacist, Licensee has a professional duty not to enter false information into any records or data processing systems maintained by his employer.

6. Between June 19, 2007 and December 11, 2007, Licensee had a relationship of professional trust and/or confidence with the pharmacy.

7. On or about October 2, 2007, and while on duty at the pharmacy, Licensee wrote two prescriptions for himself for Azithromycin and Crantex LA tablets without prior physician authorization. Licensee forged the signature of a "Dr. Mark Shen, M.D." on these prescriptions without Dr. Shen's authorization. Licensee then entered these prescriptions into the pharmacy's electronic data processing ("EDP") system under the name "Richard Hall" and filled and labeled these prescriptions under the name "Richard Hall."

8. On or about October 12, 2007, and while on duty at the pharmacy, Licensee wrote a prescription for himself for Levaquin without prior physician authorization. Licensee forged the signature of a "Dr. Mark Shen, M.D." on this prescription without Dr. Shen's authorization. Licensee then entered this prescription into the pharmacy's EDP system under the name "Richard Hall" and filled and labeled this prescription under the name "Richard Hall."

9. On December 11, 2007, Licensee was terminated from employment at the pharmacy for forging prescriptions for himself for Azithromycin, Crantex LA tablets, and Levaquin, and for entering false data into the pharmacy's EDP system.

Joint Conclusions of Law

1. 20 CSR 2220-2.018, states, in pertinent part:

(1) In order for a prescription to be valid for purposes of dispensing a medication by a pharmacy, it must conform to all requirements as outlined in sections 338.056 or 338.196, RSMo, and contain the following information:

* * *

(B) The name of the patient(s);

(C) The prescriber's name, if an oral prescription, signature if a written prescription [.]

2. 20 CSR 2220-2.080(1) states:

All information concerning the compounding, dispensing or selling at retail of any drug, medicine or poison pursuant to a lawful prescription which is entered into an electronic data processing (EDP) system at any pharmacy shall be entered only by a licensed pharmacist or by an individual under the direct supervision and review of a licensed pharmacist. That pharmacist shall be personally responsible for the accuracy of the information.

3. 21 U.S.C. § 353 states in pertinent part:

(b) Prescription by physician; exemption from labeling and prescription requirements; misbranded drugs; compliance with narcotic and marihuana laws

(1) A drug intended for use by man which –

(A) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(B) is limited by an approved application under section 355 of this title to use under the professional supervision of a practitioner licensed by law to administer such drug;

(C) Redesignated (B)

shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original

prescription or by oral order which is reduced promptly to writing and filed by the pharmacist.

4. Section 338.055, RSMo, states in pertinent part:

2. The board may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate or registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

5. Because Licensee wrote prescriptions for himself without prior physician authorization for Azithromycin, Crantex LA tablets, and Levaquin and forged a physician's signature to such prescriptions, Licensee engaged in misconduct, fraud, misrepresentation, and dishonesty in the practice of pharmacy, providing cause to discipline his license pursuant to § 338.055.2(5), RSMo.

6. Because Licensee wrote prescriptions for himself without prior physician authorization for Azithromycin, Crantex LA tablets, and Levaquin and forged a physician's signature to such prescriptions, Licensee violated 20 CSR 2220-2.018(1), providing cause to discipline his license pursuant to § 338.055.2(6), RSMo.

7. Because Licensee entered false data into the pharmacy's EDP system by entering the prescriptions he had written for himself under the name "Richard Hall," Licensee violated 20 CSR 2220-2.080(1), providing cause to discipline his license pursuant to § 338.055.2(6), RSMo.

8. Because Licensee wrote prescriptions for himself without prior physician authorization for Azithromycin, Crantex LA tablets, and Levaquin and forged a physician's signature to such prescriptions, and because Licensee entered false data into the pharmacy's EDP system by entering the prescriptions he had written for himself under the name "Richard Hall," Licensee violated the professional trust and/or confidence of the pharmacy, providing cause to discipline his license pursuant to § 338.055.2(13), RSMo.

9. Because Licensee wrote prescriptions for himself without prior physician authorization for Azithromycin, Crantex LA tablets, and forged a physician's signature to such prescriptions, Licensee violated 21 U.S.C. § 353(b), providing cause to discipline his license pursuant to § 338.055.2(15), RSMo.

Jointly Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMO.

1. Licensee's license as a pharmacist, License No. 043888, is hereby placed on **PROBATION for three (3) years.**

2. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Licensee is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work locations he must provide the Board a list of locations worked if requested by the Board or Board's representative.

3. Licensee shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

4. Licensee shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

5. Licensee shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meeting will be at the Board's discretion and may occur periodically during the disciplinary period. Licensee will be notified and given sufficient time to arrange these meetings.

6. If, after disciplinary sanctions have been imposed, the Licensee ceases to keep his Missouri license current or fails to keep the Board advised of his current place of employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

7. If, after disciplinary sanctions have been imposed, the Licensee begins employment as a pharmacist or technician outside the state of Missouri, such periods shall not be deemed or taken as any part of the time of discipline so imposed. Licensee may petition the board to seek a waiver for any portion of this requirement by making such a request in written form to the Board for its consideration. No exception will be made to this requirement without prior board approval.

8. If Licensee leaves the state of Missouri for more than 30 consecutive days, such periods shall not be included as a part of the time of discipline so imposed.

9. Licensee shall provide all current and future pharmacy and drug distributor employers and managers-in-charge a copy of this disciplinary order within five (5) business days of the effective date of discipline or the beginning date of each employment. IF at any time Licensee is employed by a temporary employment agency he must provide each pharmacy and drug distributor employment and manager-in-charge a copy of this disciplinary order prior to or at the time of any scheduled work assignments.

10. Licensee shall not serve as a preceptor for interns.

11. Licensee shall report to the Board, on a preprinted form supplied by the Board office, once every six months (due by each January 1 and July 1), beginning with whichever date occurs first after this agreement becomes effective, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary order.

12. Licensee shall not serve as a pharmacist-in-charge or in a supervisory capacity without prior approval of the Board.

13. Licensee shall not fill prescriptions for himself or his family members during the disciplinary period.

14. Licensee's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order. If the Board determines that Licensee has violated a term or condition of this settlement agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this settlement agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this settlement agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this settlement agreement has occurred.

15. The parties to this Order understand that the Board of Pharmacy will maintain this agreement as an open record of the Board as provided in Chapters 338, 610, and 620, RSMo.

16. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

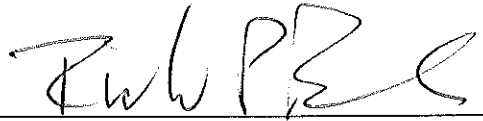
17. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof void or unenforceable.

18. Licensee understands that he may, either at the time the settlement agreement is signed by all parties, or within fifteen (15) days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's license as a pharmacist. If Licensee desires the Administrative hearing Commission to review this agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

19. If Licensee requests review, this settlement agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the settlement agreement sets forth cause for disciplining Licensee's license. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement

goes in to effect fifteen (15) days after the document is signed by the Executive Director of the Board.

LICENSEE



Richard P. Butler

Date 12-31-08

MISSOURI BOARD OF PHARMACY



Tom Glenski
Chief Inspector
Missouri Board of Pharmacy
Date 1-14-09

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**ATTORNEYS FOR MISSOURI
BOARD OF PHARMACY**